

APPENDIX B

Timing and Eligibility

I. Introduction

Eligibility for Section 180(c) is restricted to those states and tribes through whose jurisdictions the Department of Energy will ship spent nuclear fuel and high-level radioactive waste to a repository or interim storage facility. Some local governments have requested that they receive grants directly. However, Section 180(c) of the NWPA says “The Secretary shall provide technical assistance and funds to States for training ... appropriate units of local government”. Given the wording of the Act, local governments would seem to be prohibited from applying directly to DOE for grants.

The primary questions about eligibility are: (1) how many years prior to a shipment does a state or tribe become eligible to receive Section 180(c) assistance; and (2) whether a jurisdiction which might respond to an emergency on a route outside its jurisdiction (through mutual aid or other legal agreement) should be eligible for funds.

II. Background

Most stakeholders have consistently requested 3-5 years to plan for shipments to a repository *prior* to the start of shipments. A few states have said training should begin only one or two years prior to shipments. Some DOE shipping programs have provided assistance for training only a few months prior to shipment. These programs, however, involved limited numbers of shipments with limited public visibility and the affected states were nearly unanimous in their strong dissatisfaction with the timing of assistance. If OCRWM allows states and tribes to apply for grants up to 4 years prior to the first scheduled shipment, but doesn’t require it, such a policy would meet stakeholder requests and would be consistent with DOE’s other long-term shipping campaign at WIPP.

The timing of assistance and eligibility is inextricably dependent on the waste acceptance schedule – what sites will ship, in which order, along which routes, during which time periods. The more predictable and efficient the acceptance schedule, the easier it will be for DOE to determine eligibility for Section 180(c) funds and for the states and tribes to efficiently utilize and leverage their grant funds.

Here are excerpts from the *1998 Draft Policy* on Timing and Eligibility:

- Eligible states and tribes must be along a route or have cross-deputization or mutual aid agreements with a jurisdiction that will have shipments through it.
- The program would begin four years prior to the first shipment with one year for the application process and three years for training.
- The governor or tribal leader would be requested to select one agency or representative within the jurisdiction to apply for and administer the Section 180(c) grant.
- If funding needs to be provided to other agencies (for example, from the emergency services agency to the highway patrol to pay for

inspector training), the transfer of funds would be the responsibility of the recipient state or tribe.

- OCRWM would identify the preliminary routes within state and tribal jurisdictions when it notifies governors and tribal leaders of their eligibility.
- In accordance with the Section 180(c), local governments will not be eligible to apply for Section 180(c) grants directly. However, states, and tribes, if they have subjurisdictions, would be required to coordinate their planning with local jurisdictions, indicating in the application that the needs of local public safety officials have been considered and how the training assistance will be provided to local jurisdictions and their appropriate public safety officials.
- Awareness level training would be funded. If funds were available, jurisdictions would be allowed to train to the hazmat operations and technician level.
- If there is a lapse of NWPAs shipments for three or more years, the state or tribe would receive no funds during those years and would regain eligibility three years prior to another NWPAs shipment through its jurisdiction.

III. Options Considered

The Topic Group used the timing and eligibility statement from the *1998 Draft Policy* as a starting point. The Topic Group's recommendations differ little from the 1998 Draft Policy. There are three changes of note: (a) the Topic Group clarified the timing for when shipments lapse through a jurisdiction; (b) the group suggested giving states and tribes the option of starting funding up to four years prior to planned shipments; and (c) the Topic Group agreed that, in situations where jurisdictions have cross-deputization or mutual aid agreements, those states should work with DOE, not each other, to receive 180(c) assistance.

IV. Recommendation to Management

The Topic Group recommends the following on eligibility:

- Jurisdictions become eligible no less than three years prior to shipments through their jurisdiction.
- A jurisdiction remains eligible for Section 180(c) funds as long as shipments travel within or through the jurisdiction.
- Where a route constitutes a border between two states, a state and tribal government, or two tribal governments, every jurisdiction with emergency response responsibility and inspection authority over the route will be eligible for Section 180(c) assistance.
- If a state or tribe will *not* have shipments but has cross-deputization or mutual aid agreements with a jurisdiction that *will* have shipments, the former may work with DOE to receive funding.

The Topic Group recommends the following timing:

- 5 years prior to scheduled shipment: Letter to governors announcing anticipated routes, and therefore, eligibility. After the initial letter to the governor, succeeding letters of eligibility will be sent to the state or tribal agency or staff that administers Section 180(c) or to whomever the governor designates.
- 4 years prior to scheduled shipment: Planning grants issued. Funds may be carried over past initial 12-month grant period.
- 3 years prior to scheduled shipment: Training grants issued each year prior to first scheduled shipment. This timing is optional. States and tribes are not required to start training and planning this soon.
- Training grants continue each year of eligibility.
- If shipments through a jurisdiction stop for 4 or more years, then jurisdictions lose eligibility until shipments are scheduled to occur within 3 years. In this case, jurisdictions could apply for another planning grant since so much time had elapsed since they last planned for NWPA shipments. The planning grants would be available 3 years prior to scheduled shipments and the training grants would be available 2 years prior to scheduled shipments and every year thereafter that there were shipments scheduled, unless of course there was more than a four year interruption again.
- The Topic Group recommends that DOE require in the application a 5-year projection/2 year work plan, similar to WIPP requirements.